



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WTI/172143

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a Wisconsin Works (W-2) overpayment, a hearing was held on March 23, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether there is jurisdiction to review the overpayment claim.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Maximus
4201 N. 27th St., Suite 400
Milwaukee, WI 53216

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received W-2 assistance in 2011. By a notice dated August 4, 2011 the W-2 agency informed petitioner that she was overpaid \$1,037 in W-2 payments between March 30 and May 31, 2011 due to failure to report earned income, claim no. [REDACTED]. Petitioner did not request a fact finding hearing.

3. In January 13, 2012, the PACU sent petitioner a notice informing her that it intended to intercept her tax refund to recover the overpayment, for which no repayment had been made.
4. Petitioner filed this appeal on February 19, 2016, after the agency intercepted her tax refund.

DISCUSSION

Wis. Stat., §49.85(2)(b), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of W-2 payments, child care assistance, and emergency assistance. The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(b).

An appeal of the tax intercept must be filed within 30 days of the date of the tax intercept notice. Wis. Stat., §49.85(3)(b)2. The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

W-2 agencies must recover overpayments from recipients. Wis. Stat., §49.195(3). If an agency seeks recovery of an overpayment, the agency must provide the person an opportunity for a fact finding review under Wis. Stat., §49.152. A petition for a fact finding review must be filed with the agency within 45 days of the agency action. Wis. Stat., §49.152(1). If the review is not requested within the time limit, review of the action no longer is available.

Petitioner filed this appeal primarily to contest the original overpayment determination. Because she did not file for a fact finding review within 30 days of the overpayment notice, review of the overpayment claim no longer is available. In addition, petitioner did not appeal the tax intercept within 30 days of the notice. Thus review of the utilization of the tax intercept to recover the overpayment also is unavailable. I must conclude, therefore, that the PACU had authority to intercept petitioner's tax refund as a means of recovering the overpayment.

CONCLUSIONS OF LAW

Because petitioner did not appeal the overpayment at issue in this case timely, the agency may use all legal means, including tax intercepts, to recover it.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 25, 2016.

Wisconsin Works (W-2)
Public Assistance Collection Unit